

**Editor's note: Reconsideration denied by order dated March 20, 1972**

HUMBLE OIL & REFINING COMPANY

IBLA 70-365 to

Decided November 8, 1971

70-368

Outer Continental Shelf Lands Act: Sulphur Leases -- Secretary of the Interior

Where the notice of competitive bidding for sulphur leases reserves to the Government the right to reject any and all bids, the high bid may be rejected if the Secretary (or his delegate) determines it to be in the public interest to do so.

IBLA 70-365 - 70-368

: OCS-G 1919-1922

HUMBLE OIL & REFINING COMPANY

: Competitive sulphur  
: lease bids rejected

: Affirmed

### DECISION

This appeal by Humble Oil & Refining Company is from a decision dated May 14, 1969, whereby the manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, rejected certain high bids submitted competitively for sulphur leases on tracts of land in the Outer Continental Shelf off Louisiana. 1/

In a decision dated July 30, 1969, the Chief, Office of Appeals and Hearings, Bureau of Land Management, had rejected Humble's appeal from the Outer Continental Shelf Office decision of May 14, 1969. Humble then appealed to the Secretary, and at its request, the case was remanded to the Director, Bureau of Land Management, for reconsideration with the appeals of Texas Gulf Sulphur Company and Freeport Sulphur Company from the rejection of their bids submitted at the same sulphur lease sale. Humble Oil & Refining Company, A-31195 (March 11, 1970). Freeport's appeal was dismissed by the Director, Bureau of Land Management, pursuant to its request. Freeport Sulphur Company, OCS-G 1939,

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1/ Humble Oil & Refining Company

Serial Value	Tract	Bid	Per acre	Resource Estimate
1919	161-S	\$105,675.00	\$56.36	\$511,920.00
1920	163-S	340,825.00	272.66	758,160.00
1921	164-S	34,425.00	27.54	476,280.00
1922	166-S	34,425.00	27.54	427,680.00

etc. (June 10, 1970). Texas Gulf Sulphur's appeal was dismissed by this Board pursuant to its request, Texas Gulf Sulphur Company, IBLA 70-341 through 70-361 (February 5, 1971). This Board has assumed jurisdiction over Humble's appeal. 2/

The land was offered for lease on January 17, 1969, pursuant to the provisions of section 8 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337 (1970), and the regulations issued thereunder, 43 CFR Part 3380 (now 43 CFR Part 3300 (1971)). The announcement of the lease offer stated: "Bids will be considered on the basis of the highest cash bonus offered. . . . The United States Government reserves the right and discretion to reject any and all bids, regardless of the amount offered." 34 F.R. 944, 945. The bid opening was held on May 13, 1969. In each case the rejected bid was the highest bid and, except for OCS-G 1920, the only bid submitted for the particular tract of land applied for. In each case the bid was for substantially less than the resource estimate value determined by the Department. See fn. 1 supra. Each bid was rejected for "inadequacy of the total cash bonus bid."

The appellant contends, in substance, that the Outer Continental Shelf Lands Act expresses the Congressional mandate that prompt sulphur exploration of the Outer Continental Shelf is in the national interest, and that sulphur leases should be issued to the qualified person offering the highest cash bonus on the basis of competitive bidding unless there is clear and overwhelming evidence that the bonus bid is so grossly inadequate as not to be worthy of serious consideration. It argues that there is no authority in the Act to permit rejection of a bid for inadequacy of the cash bonus. It contends the individual bids are reasonable and responsible, arrived at after consideration of geological and geophysical information obtained at some cost and with due consideration of the high risk factor involved in sulphur exploration in the submerged lands of the Outer Continental Shelf. It maintains that it is in the best financial interest of the Government to accept these high bids now. It asserts that continued denial of its bids will damage it because it has divulged its interests in areas of the Outer Continental Shelf as well as its estimation of the reasonable values of the resource in the specific leasing tracts, in the event these lands are opened to a later competitive lease offering. It made oral argument before the Director, Bureau of Land Management.

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2/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, on July 1, 1970, to the Board of Land Appeals, effective the same date. Cir. 2273, 35 F.R. 10009, 10012.

By the terms of the bid invitation, as well as the governing regulation, 43 CFR 3382.5 (as it read at the time of the sale), the right was reserved to the authorized officer to reject any and all bids. 3/ Thus, the Government is not bound to accept any bid which might be considered inadequate, especially one which is greatly disparate from the resource estimate value assigned by the Government's experts. The Secretary (or his delegate) is not required to show that a bid is inadequate, unreasonable, or lacking in good faith in order to exercise his discretion in determining whether a bid should be accepted or rejected. It is sufficient that he feels it is not in the public interest to accept a given bid. Pan American Petroleum Corporation, A-29510 (August 13, 1963); Humble Oil & Refining Company, et al., A-30906 (December 5, 1967).

The appellant has adverted to the holding of the Court in Superior Oil Company v. Udall, 409 F.2d 1115 (D.C. Cir. 1969), as argument that once the bids have been opened, the highest qualified bidder must be granted a lease. 4/ The situation in Superior may be distinguished from that here present.

There, at an Outer Continental Shelf oil lease sale, Union Oil Company of California and Superior submitted sealed bids in the amount of \$13,600,000 and \$11,628,691.20, respectively. Union's bid was the highest and Superior's next highest of the nine bids received.

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3/ The regulation provided:

"Following the public opening of the sealed bids as provided for in the notice of lease offer, the authorized officer, subject to his right to reject any and all bids, will award the lease to the successful offeror. . . ."

The regulation was amended at 34 F.R. 13550, August 22, 1969, to provide specifically, among other things, that any bid could be rejected, regardless of the amount offered, and is now codified in 43 CFR 3302.5 (1971).

4/ Subsequently the parties agreed to a settlement, and on joint motions to withdraw the opinion and vacate the judgment in one of the consolidated cases and to recall and vacate the judgment in the other, the court remanded each case to the District Court with orders to dismiss it as moot. Superior Oil Company et al. v. Hickel, 421 F.2d 1089 (D.C. Cir. 1969).

At that sale, the manager declared Union's bid unacceptable because it had not been signed. On the sixth day after the sale, Superior's check for \$2,325,738.24, submitted with its bid, was deposited for collection. Union's check was deposited in a suspense account pending the Secretary's determination of the status of Union's bid. The checks of all other bidders were returned uncashed.

When the Secretary on June 17, 1968, held that Union's bid was valid, litigation followed. The Court of Appeals affirmed the District Court's ruling that the lease must be issued to Superior. It held that Union's bid was unsigned and, consequently, defective, and Superior was the "highest qualified responsible bidder."

After pointing out that there were other considerations than the \$2,000,000 the United States would gain from issuing a lease to Union which could affect the whole Government program of making public contracts through sealed bids, the Court, in an opinion by Judge Burger (now Chief Justice of the Supreme Court) stated:

The Secretary's concern over the differential between Union and Superior is understandable but we think it misses the central legal issues and the important public policy underlying strict rules in bidding. It is also very important that bidders who comply faithfully and scrupulously with bidding regulations should not in effect be penalized by the errors of less careful bidders who fail to follow correct procedures. This would be a consequence of the Secretary's now casting out all bids and beginning again because of the infirmity in Union's bid.

The requirement of steadfast compliance with competitive bidding procedures comports best with the need to promote the integrity of the bidding process. Although such a stance may entail some limitation on the Secretary's discretion, it seems clear that this is an indispensable ingredient to the maintenance of competitive bidding processes which will engender public confidence and that of persons dealing with the Government.

It then went on to discuss the District Court's ordering the Secretary to issue a lease to Superior:

The only remaining question is the propriety of the District Court's ordering the Secretary to issue the lease to Superior. Section 8 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337(a) (1964), provides that the Secretary of the Interior "is authorized to grant to the highest responsible qualified bidder by competitive bidding \* \* \*." (emphasis added). The use of the word "authorized" indicates that the Secretary has discretion in granting leases and is not required to do so. He might for example have rejected all bids on the ground that none was in the public interest, but if this had been indicated it was a decision which he was obliged to make at the time, not as an afterthought with the result that Union and other bidders would have "another bite at the apple."

The Court recognized the Secretary's discretionary authority to reject all bids and that its decision constituted a limitation on the Secretary's discretion. It determined that in the circumstances of the case before the Court, the leasing process had gone so far and the willingness of the Department to issue a lease to Superior, absent Union's bid, was so apparent, it would be inequitable to allow Union a second opportunity to bid.

The bids in the cases on appeal have had a far different treatment. They were all rejected at the sale, orally first and in writing the next day. There is no indication in the record that the lease would have been issued to appellants if a higher bid had not been made. In fact, the land office manager did exactly what the Court said he could do in the exercise of his discretion. He rejected all the bids, on the ground that none was in the public interest, at the time of the sale and not as an afterthought.

Superior, then, supports the authority of the Secretary (or his delegate) to reject all bids in the circumstances of this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Joan B. Thompson, Member

Martin Ritvo, Member.

